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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RONALD J. BEGANDO,

Plaintiff and Respondent,

v.

ELIZABETH M. PETERSON et al.,

Defendants and Appellants.

B171044

(Los Angeles County
Super. Ct. No. YC041783)

APPEAL from an order of the Superior Court of Los Angeles County, Ramona G. See, Judge. Affirmed.

Gilbert, Kelly, Crowley & Jennett, Barbara J. Mandell, Albert P. DiRocco, Jr., and Teresa M. Wilson for Defendants and Appellants.

Richard M. Hoffman for Plaintiff and Respondent.

INTRODUCTION

Defendants Elizabeth M. Peterson and John M. Peterson appeal from an order denying their motion for a nunc pro tunc order correcting clerical error. In defendants' view, the trial court erred in failing to rule upon their cost memorandum, in that they were the prevailing parties at trial. While we agree that defendants should be deemed the prevailing parties, the trial court could not have known that when defendants filed their cost memorandum. In short, there was no clerical error to correct and thus no abuse of discretion in denying their motion seeking the correction of such error.

BACKGROUND

Following a two vehicle rear end collision, plaintiff Ronald J. Begando sued defendants for negligence. On July 5, 2002, defendants served plaintiff with an offer to compromise pursuant to Code of Civil Procedure section 998.¹ Plaintiff did not accept defendants' offer of \$15,000. Following the subsequent jury trial, which resulted in a verdict awarding plaintiff \$2,500 in damages, the court entered judgment accordingly on September 23, 2002.

Inasmuch as the damage award was significantly less than the offer to compromise, defendants viewed themselves as the prevailing parties pursuant to section 998, subdivision (c)(1). They consequently filed a cost memorandum on October 8, 2002, requesting costs of \$21,256. The court clerk failed to enter judgment for costs in defendant's favor, which prompted defendants to move for correction of this perceived error.

¹ All further section references are to the Code of Civil Procedure unless otherwise indicated.

DISCUSSION

The court has inherent power to correct clerical error in its judgment. An error is clerical if the mistake or omission results from the *court's* inadvertence. (*Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1034-1035.) Section 1032, subdivision (b), entitles a prevailing party to costs as a matter of right unless another statute expressly provides to the contrary. Subdivision (a)(4) of section 1032 defines “prevailing party” as the party with the net monetary recovery. Subdivision (c)(1) of section 998 prohibits a plaintiff from recovering costs and entitles a defendant to them if the plaintiff did not accept an offer to compromise and he fails to obtain a more favorable judgment or award.

In other words, under the provisions of section 998, subdivision (c)(1), a factual determination must be made before a defendant is entitled to costs: whether the plaintiff failed to obtain a judgment more favorable than an offer of compromise he failed to accept. Until that factual determination has been made, a defendant is not entitled to costs if the plaintiff has a net monetary recovery.

Defendants did not seek a determination that they were entitled to costs due to plaintiff's failure to secure a more favorable judgment. Instead, they merely submitted a cost memorandum which made no mention of the offer to compromise that plaintiff failed to accept.

On its face, the judgment revealed that plaintiff had a net monetary recovery and thus was a prevailing party in the absence of any further determination. Inasmuch as *plaintiff* appeared to be the prevailing party, the clerk properly entered judgment accordingly. In short, any “error” in failing to award defendants costs was not due to the *court's* inadvertence but to that of defendants in failing to establish their entitlement to costs. Inasmuch as there was no clerical error for the court to correct, it did not abuse its discretion in denying defendants' motion for correction.

The order is affirmed.

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SPENCER, P. J.

We concur:

VOGEL, J.

SUZUKAWA, J.^{*}

^{*} Judge of the superior court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.